IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 919 OF 2005

M/s. Asian Builders & Developers .. Appellant

Vs.

Smt. Merry Inas Colaco & Ors. .. Respondents

Mr. Arvind J. Joshi for appellant.

CORAM: B.H. MARLAPALLE, J.

Date : October 19, 2005.

P.C.:

1. Heard Mr. Joshi, the learned counsel for the appellant-plaintiff in Special Civil Suit No.15 of 2004 filed in the Court of learned Civil Judge, Jr. Division at Palghar.

2. This appeal arises from the order dated 10/8/2005 passed by the learned Civil Judge, Senior Division at Palghar rejecting the application at Exh.5 for temporary injunction.

3. As per the plaintiff the suit land i.e. agricultural land admeasuring 6.08 ares from Survey

No.95 Hissa No.6 was originally owned by defendant nos.1 to 8 and the said defendants sold it or agreed to sell it to defendant no.9 for a consideration of Rs.6,32,000/- by an agreement of sale dated 22/6/1992. Consequently, defendant no.9 agreed to sell the suit land to the plaintiff for Rs.7,89,000/- and the agreement of sale was executed on 2/11/1996. The plaintiff further contends that out of the total sale consideration, an amount of Rs.2,22,000/- was paid by cash and Rs.5,67,000/- were to be handed over by way of cheques along with two flats admeasuring 840 sq.ft. in the proposed building and in the event of the flats being handed over, the balance amount was not required to be paid. On or about 6/3/2003 the defendant no.9 sold the suit land to defendant no.10 by registered sale deed and for a consideration of Rs.10,20,000/-. The plaintiff, therefore, filed Special Civil Suit No.15 of 2004 for specific performance of the agreement for sale signed on 2/11/1996, after the sale deed in favour of defendant no.10 was registered.

4. While dealing with the application at Exh.5 filed by the plaintiff for temporary injunction, the

trial court noted that the execution and registration of the sale deed dated 6/3/2003 between the defendant nos.1 to 9 on one hand and the defendant no.10 on the other hand was not disputed and the issue regarding the transaction between defendant nos.1 to 8 on one hand and defendant no.9 on the other on 22/6/1992 and the subsequent transaction between defendant no.9 and the plaintiff on 2/11/1996 was required to be proved during the trial of the suit. On the basis of the agreement for sale dated 2/11/1996, the plaintiff had kept quiet for almost eight years and the suit for specific performance was filed in the year 2004. After the sale deed dated 6/3/2003 was registered the defendant no.10 had already undertaken construction of a multi storied building on the suit land and the construction was nearing completion as per the Commissioner's report. Thus, the land owners had already created third party interest over the suit land in favour of defendant no.10. The plaintiff had prayed for restraining orders against the defendants so that they should not transfer the suit land to third party. This prayer would not survive in view of the sale deed already executed and registered in

favour of defendant no.10 by and on behalf of the land owners. On one hand the plaintiff contends that the defendant no.9 signed the agreement dated 2/11/1996 in his favour as a Power of Attorney holder of defendant nos.1 to 8 and on the other hand the plaintiff contended that defendant nos.1 to 8 had already agreed to sell the suit land to defendant no.9 by way of an agreement dated 22/6/1992. The plaintiff himself is not clear on the status of defendant no.9 and his title to the suit land either as a vendor or the Power of Attorney. In these obtaining circumstances, the application at Exh.5 has been rightly rejected. No interference is called for in the said order as it does not suffer from any illegalities.

5. The appeal is, therefore, dismissed in limine. Trial of the suit is expedited.

(B.H. Marlapalle,J.)